

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WESLEY M. POLLARD, SR.,
Plaintiff,

V.

**SUPERINTENDENT MICHAEL
CLARK, et al.,
Defendants.**

C.A. No. 20-194 Erie

District Judge Susan Paradise Baxter

Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff Wesley M. Pollard, Sr., an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”), initiated this civil rights action by filing a *pro se* complaint against multiple staff members at SCI-Albion, asserting three constitutional claims: (1) retaliation in violation of the First Amendment; (2) cruel and unusual punishment in violation of the Eighth Amendment; and (3) deprivation of due process in violation of the Fourteenth Amendment. The case was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates, and was subsequently reassigned to the undersigned, as presiding judge, on April 7, 2021, with Judge Lanzillo remaining as the referred Magistrate Judge for all pretrial proceedings.

Following litigation of a motion to dismiss previously filed by Defendants [ECF No. 17], this Court issued an Order on December 14, 2021, adopting the Magistrate Judge's Report and Recommendation [ECF No. 27] and dismissing Plaintiff's complaint, without prejudice to Plaintiff's right to file an amended complaint to allege sufficient facts to support each of his claims [ECF No. 28]. Plaintiff subsequently filed a timely amended complaint on January 21,

2022 [ECF No. 29], in response to which Defendants filed a motion to dismiss [ECF No. 30] based on Plaintiff's continued failure to state a claim upon which relief may be granted. Plaintiff failed to file a response to this motion.


On June 13, 2022, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that Defendants' motion to dismiss Plaintiff's amended complaint be granted, with prejudice [ECF No. 35]. However, due to a clerical/scanning error, only four of the seven pages of the R&R (every other page) were docketed and mailed to Plaintiff. So, a corrective entry was made on August 18, 2022 [ECF No. 43], pursuant to which a complete copy of the R&R was entered on the docket. The complete copy of the R&R was then mailed to Plaintiff and Plaintiff was granted additional time, until September 6, 2022, to file objections to the R&R. Nonetheless, no objections have been filed to date.

After *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 15th day of September, 2022;

IT IS HEREBY ORDERED that Defendants' motion to dismiss [ECF No. 29] is GRANTED and Plaintiff's amended complaint is DISMISSED, with prejudice. The report and recommendation of Magistrate Judge Lanzillo, issued June 13, 2022 [ECF No. 35 (re-docketed as ECF No. 43)], is adopted as the opinion of the court.

The Clerk is directed to mark this case CLOSED.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge